

December 17, 1970

EXPLANATORY MEMORANDUM RELATING TO
VOLUNTARY PROGRAM FOR
"TAR" AND NICOTINE DISCLOSURE

The following memorandum is intended to provide some explanatory material relating to various portions of the letter of December 17, 1970, forwarded to the Commission by eight cigarette manufacturers.

ADVERTISING COVERED

This program is applicable to cigarette advertising in newspapers, magazines, and other periodicals; as well as advertising on billboards, on handbills, and in direct mail circulars; and on signs displayed inside of stores and other places of business selling cigarettes, which are reasonably not expected to be exposed to the public beyond a six month period. Certain promotional or display items such as ashtrays, cigarette lighters, decals, display units, and pencils imprinted with cigarette advertising, are not included because there is no practical way to change "tar" and nicotine figures thereon, were they used on these items, to reflect changes in the "tar" and nicotine content of the variety of cigarette mentioned. Many items of this nature pass from the control of the company concerned or are semi-permanent and may last for a number of years. If such items were included in this program, this would lead to the presence of old, and perhaps inaccurate figures being presented to consumers, and consumer confusion would be engendered by the conflict between those figures and current figures being advertised.

In order to eliminate any possible confusion, the term "billboards" shall mean:

(1) Media billboard advertising messages on the following structures exposed to the general public:

2-30 Sheet Billboards;
Painted Billboards;
Spectacular Billboards; and

PM3001058550

(2) Advertising messages on the following structures or transportation vehicles exposed to the general public:

Trucks;
Public Transit Vehicles;
Transit Station Platforms;
Transportation Terminals.

A sign on a plant, warehouse or other facility related to the manufacture of cigarettes, which identifies such plant, warehouse or facility is not considered a billboard within this program.

LEAD TIME

All advertisements must be submitted in advance of their publication date by some period of time, usually called the lead time, which varies from periodical to periodical. This lead time is several weeks for some periodicals and several months for others. Necessarily, when the Commission publishes a new report of test results on June 1st, it is physically impossible for the figures included in that report to appear in June and July advertisements in some periodicals. A workable solution is provided to this problem in order to make this voluntary program capable of practical implementation in the light of requirements dictated by the mechanics of publishing and advertising.

Any workable solution to this problem must inescapably utilize ascertainable dates when definable acts must take place. The program does this. It utilizes publication in the Federal Register of the Commission test results as a starting date, which is definitely ascertainable, and it employs dates such as closing date and delivery in final form to the printer in order that it can be precisely determined when the time period terminates. These dates of delivery to the printer and closing date were selected, rather than the date of the appearance of the periodical in homes or on newsstands, or the date on the cover of a periodical, because the dates specified are the times at which control over the advertising passes from the hands of the cigarette company.

In employing the date of publication of the Commission test results in the Federal Register, it is recognized that the

company advertising cannot as a practical matter require the Commission to publish its results in the Federal Register. It is anticipated, however, that the Commission will accept the responsibility regularly, and at not more than six month intervals, to publish its results in the Federal Register.

In the case of billboards, handbills, and direct mail circulars, in addition to complying with the lead time requirements, each company will use its best efforts to have "tar" and nicotine figures appearing based upon published Commission test results as recent as practically possible.

THE LANGUAGE OF THE DISCLOSURE

The legends set forth in the program for disclosing "tar" and nicotine are intended to supply sufficient information to explain the source and nature of the "tar" and nicotine figures disclosed without confusing the consumer. An abbreviation for the word average is included to make it clear that the FTC figures are not based on testing individual cigarettes, but are instead averages of the averages obtained by smoking five cigarettes on each of twenty ports.

In the first legend, relating to a Commission market pick-up, the FTC Report, from which the "tar" and nicotine figures are taken is to be identified by its date in the form of an abbreviation of the month and year, e.g., Jan. '71.

CONTINUATION OF COMMISSION TESTING

This entire program is predicated upon the continued testing by the Federal Trade Commission at regular and periodic intervals of approximately 4-6 months. Obviously if the Commission should, for some reason, totally discontinue its testing operations, or fail to conduct and publish new test results at least six months after an earlier test has been published, then it would be uninformative to consumers if each company continued to use the old, out-dated figures obtained in an earlier Commission test.

THE COMMISSION'S FAILURE TO TEST
AN EXISTING VARIETY

Cigarette companies sometimes market certain varieties in only a few localities, or in relatively small quantities. Under the current system of Commission pickup of market samples, a situation might occur in which the Commission failed to pick up any cigarettes of an advertised variety or a sufficient number to permit testing.

The program provides that in such cases each company may conduct its own tests in accordance with the present Commission methodology and in the interim utilize the results of its tests in advertising. This provision is necessary because no company will have control over the Commission testing, and it is of course possible that the Commission may, for some reason, fail to test cigarettes of one or more advertised varieties. It is not reasonable that such a failure on the part of the Commission should effectively preclude advertising of that variety because of the absence of Commission "tar" and nicotine figures. It is only to avoid this possibility that the company concerned may use its own test results on existing varieties. It is to be emphasized, however, that it is extremely unlikely as a practical matter that with an organized Commission testing program the Commission would ever fail to test one or more existing varieties.

NEW VARIETIES

Cigarette companies sometimes begin marketing new varieties of cigarettes to respond to various consumer demands and other marketing factors. The effective marketing of these new varieties requires that "tar" and nicotine figures for those varieties be obtained in a very prompt way which will not require time consuming procedures to protect information believed by the cigarette company to be a trade secret and commercially valuable. The program provides an effective procedure in that situation by disclosure of "tar" and nicotine on the basis of the company's own testing in accordance with the Commission methodology until the next Federal Register publication.

CHANGES IN THE "TAR" AND NICOTINE CONTENT
IN VARIETIES OF CIGARETTES

The "tar" or nicotine content of some varieties of cigarettes may change from time to time. Sometimes these changes are relatively small and at other times these changes may represent a substantial percentage of the preceding "tar" and nicotine figures. Some of these changes are the result of a decision of a cigarette company to alter cigarette design or formulation, as, for example, the use of a longer filter. Other changes may be the result of variations in tobacco crops which cannot be controlled. The program provides a suitable procedure to be used in connection with these changes when they are significant in order to make available to consumers test results which are more current than those earlier published. During the period until more current test results are available, the company will utilize the latest published Commission test results.

COMMENCEMENT

Thirty working days, i.e., the lead time, are required for this program to become effective after its consideration by the Commission. This means that if notice of Commission consideration is received on December 22, for example, then "tar" and nicotine data will be included in all advertising placed more than thirty working days after December 22 in accordance with this program.